

1 MICAH R. JACOBS (STATE BAR NO. 174630)
2 ERIC K. FERRARO (STATE BAR NO. 172699)
3 JACOBS & FERRARO, LLP
4 One Embarcadero center, Suite 500
5 San Francisco, CA 94111
6 Telephone: 415-773-2852
7 Facsimile: 415-773-2854

8 Attorneys for Plaintiffs
9 DR. THOMAS YAMSHITA and SUNBURST PLANT
10 DISEASE CLINIC, INC.

11 WILLIAM L. ANTHONY (STATE BAR NO. 106908)
12 ELIZABETH A. HOWARD (STATE BAR NO. 173185)
13 HARDIP B. PASSANANTI (STATE BAR NO. 217484)
14 DIANA M. RUTOWSKI (STATE BAR NO. 233878)
15 ORRICK, HERRINGTON & SUTCLIFFE LLP
16 1000 Marsh Road
17 Menlo Park, CA 94025
18 Telephone: 650-614-7400
19 Facsimile: 650-614-7401

20 Attorneys for Defendant
21 WILBUR-ELLIS COMPANY

22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

DR. THOMAS YAMASHITA, an individual;
SUNBURST PLANT DISEASE CLINIC,
INC., a California Corporation,

Plaintiffs

v.

WILBUR ELLIS COMPANY, a California
Corporation; HUGHSON CHEMICAL
COMPANY, LLC, a California Limited
Liability Company,

Defendants.

Case No. C 06-01690 WHA

**[PROPOSED] ORDER GRANTING IN
PART AND DENYING IN PART
WILBUR-ELLIS COMPANY'S
MOTION TO COMPEL AND
MOTIONS TO STRIKE**

1 Pursuant to the hearing on Monday April 24, 2006, the Court rules as follows:

2 1. Wilbur-Ellis Company's Motion to Compel Further Answers and
 3 Responses to Wilbur-Ellis' Expedited Requests for Production of Documents ("Motion to
 4 Compel") is hereby GRANTED in part and DENIED in part:

- 5 ■ The Motion to Compel with respect to Request No. 1 is hereby
 6 GRANTED. Plaintiffs are ordered to produce all notebooks responsive to
 7 Request No. 1, on which the specifications for the Patents-in-Suit are based
 8 by noon on Wednesday, April 26, 2006. Plaintiffs will be precluded from
 9 relying on any notebooks that they do not produce at this time in this case.
- 10 ■ The Motion to Compel with respect to Request No. 2 is hereby DENIED.
- 11 ■ The Motion to Compel with respect to Request No. 3 is hereby GRANTED
 12 in part. Plaintiffs are ordered to produce lists of all customers who
 13 purchased Plaintiffs' patented fertilizer products from Hughson Chemical
 14 Company during the time it distributed Plaintiffs' products up until the date
 15 this lawsuit was filed by noon on Wednesday, April 26, 2006. Plaintiffs
 16 will be precluded from relying on any customer lists in their possession,
 17 custody or control that they do not produce at this time in this case.
- 18 ■ The Motion to Compel with respect to Request No. 5 is hereby GRANTED
 19 in part. Plaintiffs are ordered to produce documents sufficient to show the
 20 composition of the patented fertilizer product from January 1, 2001 up until
 21 the date this lawsuit was filed by noon on Wednesday, April 26, 2006.

22 2. Wilbur-Ellis' Motion to Strike the Declarations of Dr. Peter Butterfield and
 23 Robert Kmieck is hereby DENIED.

24 3. Wilbur-Ellis' Motion to Strike the Supplemental Declaration of Dr.
 25 Thomas Yamashita is hereby GRANTED.

26 4. Wilbur-Ellis is permitted to file its own laboratory results showing the
 27 composition of its allegedly infringing products no later than noon on Wednesday, April 26,
 28 2006.

1 5. Plaintiffs may take depositions of any witnesses who submitted
2 declarations attaching Wilbur-Ellis' laboratory results. Wilbur-Ellis shall make any declarants
3 available for deposition on either Thursday, April 27, or Friday, April 28, 2006.

4 6. Plaintiffs Reply Brief in support of their Motion for a Preliminary
5 Injunction shall be filed no later than 4:00 p.m. on Monday, May 1, 2006.

6
7 IT IS SO ORDERED.
8
9
10 Dated: April 27, 2006



11 Honorable William Alsup
12 United States District Court Judge
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28